

AMENDED IN SENATE MARCH 23, 1998

**SENATE BILL**

**No. 2174**

**Introduced by Senator Rainey**

February 20, 1998

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An act ~~relating to taxation~~ to add Chapter 3 (commencing with Section 15650) to Part 9 of Division 3 of Title 2 of the Government Code, relating to the State Board of Equalization.

LEGISLATIVE COUNSEL'S DIGEST

SB 2174, as amended, Rainey. ~~Taxation: taxpayers' bill of rights~~ State Board of Equalization: records.

~~Existing law imposes various taxes, including, among other things, sales, use, income, and bank and corporation taxes. The Katz-Harris Taxpayers' Bill of Rights Act specifies various taxpayer rights and protections.~~

~~This bill would make a legislative declaration of its intent to enact a new taxpayers' bill of rights, as provided.~~

~~Existing law generally prohibits members, employees, and agents of the State Board of Equalization from divulging or making known in any manner not provided by law specified information concerning the business affairs of companies reporting to the board.~~

~~This bill would require the executive secretary of the board to make open and available to the public the text of any public record having interpretive value in the administration of tax by the board after deleting specified information from the text. It would provide administrative and judicial remedies~~

with respect to requests for disclosure made pursuant to the bill.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     ~~SECTION 1. The Legislature hereby declares its~~  
2     ~~intent to enact a new taxpayers' bill of rights that will~~  
3     ~~create additional protections and safeguards for~~  
4     ~~taxpayers.~~

5     SECTION 1. Chapter 3 (commencing with Section  
6     15650) is added to Part 9 of Division 3 of Title 2 of the  
7     Government Code, to read:

8

9

CHAPTER 3. ACCESS TO PUBLIC RECORDS

10

11     15650. The Legislature finds and declares all of the  
12     following:

13     (a) It has come to the attention of the Legislature that  
14     the State Board of Equalization was sued for denying  
15     requests for public documents under the California  
16     Public Records Act. The documents in question depicted  
17     the board's working law as it revealed the board's practice  
18     in interpreting and applying the sales and use taxes. In  
19     ruling against the board in the case of State Board of  
20     Equalization v. Superior Court (10 Cal. App. 4th 1177),  
21     the Court of Appeal chastised the board by declaring that  
22     "this case concerns secret law" and unequivocally  
23     affirmed right of individuals to obtain public documents  
24     from government agencies.

25     (b) There is manifest public interest in the avoidance  
26     of "secret law" and a correlative interest in the disclosure  
27     of a public agency's working law. The revelation of a  
28     public agency's working law promotes its accountability  
29     to the public and the consistent, predictable, and  
30     nonarbitrary application and enforcement of the law. In  
31     addition, the full disclosure of tax law application and  
32     interpretation will encourage voluntary tax compliance  
33     and therefore increase state revenues.



1 (c) It is the intent of the Legislature in enacting this  
2 chapter to codify the ruling of State Board of Equalization  
3 v. Superior Court (10 Cal. App. 4th 1177) and to establish  
4 procedures and guidelines in order to facilitate maximum  
5 accessibility of public documents.

6 15650.5. Except as otherwise provided in this chapter,  
7 the text of any public record having interpretive value in  
8 the administration of the sales and use tax by the State  
9 Board of Equalization shall be open and available to the  
10 public as the board shall provide by regulation, pursuant  
11 to Section 15653.

12 15651. Unless the contrary is stated or clearly appears  
13 from the context, the definitions set forth in this section  
14 shall govern the interpretation of this chapter.

15 (a) “Board” means the State Board of Equalization.

16 (b) “Board staff” means any employee of the State  
17 Board of Equalization.

18 (c) “Confidential information” means that  
19 information prohibited from disclosure by Section 7056 of  
20 the Revenue and Taxation Code, or pursuant to the  
21 California Public Records Act, Chapter 3.5 (commencing  
22 with Section 6250) of Division 7 of Title 1, or any  
23 information that identifies or describes the persons to  
24 whom the public record pertains, or information about  
25 other persons with respect to whom a notation is made or  
26 are identified in the public record, or information about  
27 other persons that may be identified through facts  
28 contained in the public record that would link the  
29 information disclosed to the individual to whom it  
30 pertains.

31 (d) “Executive secretary” means the executive  
32 secretary of the State Board of Equalization.

33 (e) “Public record” means any public record as  
34 defined subdivision (d) of Section 6252, including, but not  
35 limited to, operation memoranda, annotation letters,  
36 current legal digests, intra-agency memoranda having  
37 interpretive value and maintained in the ordinary course  
38 of business, general bulletins, legal information bulletins,  
39 board audit and compliance manuals, board KWIC

1 indexes, board hearing minutes, and training course  
2 materials utilized in the training of the board staff.

3 15652. (a) Before making any record open or  
4 available to public inspection pursuant to this chapter,  
5 the executive secretary shall delete all of the following:

6 (1) Confidential information.

7 (2) Information specifically exempted from disclosure  
8 by any other statute that is applicable to the board.

9 (3) Trade secrets and commercial or financial  
10 information obtained from a person and that is privileged  
11 or confidential.

12 (4) Information the disclosure of which would  
13 constitute a clearly unwarranted invasion of personal  
14 privacy.

15 (b) The executive secretary shall determine the  
16 appropriate extent of these deletions. Except in the case  
17 of intentional or willful disregard of this section, the  
18 executive secretary shall not be required to make the  
19 deletions, nor be liable for failure to make the deletions,  
20 unless the executive secretary has previously agreed to  
21 make the deletions.

22 15653. (a) The board shall promulgate regulations  
23 establishing procedures and administrative remedies  
24 with respect to any requests for disclosure of any public  
25 record. These regulations shall encourage and facilitate  
26 maximum accessibility of documents to the public.

27 (b) Any person who has exhausted the administrative  
28 remedies prescribed pursuant to subdivision (a) with  
29 respect to a request for disclosures may file a petition in  
30 superior court in any city in which the Attorney General  
31 has an office for an order requiring that any public record,  
32 or portion thereof, be made open and available to the  
33 public. The court shall examine the matter de novo and  
34 may examine the entire text of the public record in order  
35 to determine whether the public record or any part  
36 thereof shall be open and available to the public. The  
37 burden of proof with respect to the issue of disclosure of  
38 any information shall be on the executive secretary and  
39 any other person seeking to restrain disclosure.

1 (c) The court shall make a decision with respect to any  
2 petition pursuant to the remedies described in  
3 subdivision (a) at the earliest practical date and the court  
4 of appeal shall expedite any review of the decision in  
5 every way possible.

6 15654. If the court finds that the executive secretary's  
7 refusal to disclose a public record is not justified, the court  
8 shall award all costs and reasonable attorney fees to the  
9 plaintiff, provided that the plaintiff substantially prevails  
10 in any litigation filed pursuant to Section 15653.

11 15655. (a) The text of a public record dated on or  
12 after January 1, 1999, shall be made open and available to  
13 the public no later than 10 days after a request for the  
14 record has been made to the executive secretary.

15 (b) The executive secretary is authorized to assess the  
16 actual cost involving these prospective requests for the  
17 duplication of any public record made open and available  
18 to the public pursuant to this chapter. Any fee shall  
19 exclude the cost of any search and retrieval of these  
20 documents and shall not exceed ten cents (\$0.10) per  
21 page. The costs involved in reviewing these documents to  
22 ensure that they reflect the current law, or costs incurred  
23 in excising confidential information pursuant to  
24 subdivision (c) of Section 15651 and Section 15652 shall  
25 not be passed on to the person making the request for the  
26 documents.

27 15657. (a) The text of a public record dated prior to  
28 January 1, 1999, shall be made open and available to the  
29 public no later than 30 days after a request for the record  
30 has been made to the executive secretary.

31 (b) The executive secretary is authorized to assess the  
32 direct costs involving these retrospective requests for the  
33 production of any public record made open and available  
34 to the public pursuant to this chapter. The fees associated  
35 with this section may include the cost of any search and  
36 retrieval of these documents, the costs involved in  
37 reviewing these documents to ensure that they reflect  
38 current law, or costs incurred in excising confidential  
39 information pursuant to subdivision (c) of Section 15651  
40 and Section 15652, but in no event shall the fees exceed

1 *three dollars (\$3) per document and ten cents (\$0.10) per*  
2 *page.*

3 *15658. The executive secretary shall furnish any*  
4 *public record without charge or at a reduced charged if*  
5 *he or she determines that waiver or reduction of the fee*  
6 *is in the public interest because furnishing the public*  
7 *record can be considered as primarily benefiting the*  
8 *taxpayers.*

9 *15659. The executive secretary shall not be required*  
10 *to make available to the public any technical advice*  
11 *memorandum and any related public record involving*  
12 *any matter that is the subject of a civil fraud or criminal*  
13 *investigation or jeopardy determination, until after any*  
14 *action relating to that investigation or determination is*  
15 *completed.*

16 *15660. (a) The executive secretary shall maintain a*  
17 *permanent system of records of accounting of all requests*  
18 *for inspection or disclosure of public records.*

19 *(b) The executive secretary shall also maintain a*  
20 *permanent system of records or accounting of all public*  
21 *records dated on or after January 1, 1999, listed by subject*  
22 *matter, and make this information available to the*  
23 *general public to facilitate access to this information*  
24 *through the disclosure procedures set forth in this*  
25 *chapter.*

